

SUPREME COURT, U. S.

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 72-6160

LAWRENCE MITCHELL,

Petitioner,

v.

W.T. GRANT COMPANY,

Respondent.

PETITIONER'S BRIEF

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Dainow, "Vicious Circles in the Louisiana Law of Privileges," 23 La. L. Rev. 1 (1964) 37

Johnson, "Attachment & Sequestration: Provisional Remedies Under the Louisiana Code of Civil Procedure," 38 Tulane L. Rev. 1 (1963) 15, 22, 25

L'Enfant, "*Fuentes v. Shevin*: Procedural Due Process and Louisiana Creditor's Remedies," 33 La. L. Rev. 62 (1972) 15

Millar, "Judicial Sequestration In Louisiana: Some Account of Its Sources," 30 Tulane L. Rev. 201 (1956) 24, 25

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LAWRENCE E. MITCHELL,

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W.T. GRANT COMPANY,

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PETITIONER'S BRIEF

OPINIONS BELOW

The opinion of the Supreme Court of the State of Louisiana is reported at 263 La. 627, 269 So.2d 186 (A.23). The opinion of the Louisiana Court of Appeal for the Fourth Circuit is unreported and is printed in the Single Appendix at 20-21. The judgment and opinion of the First City Court for the City of New Orleans is unreported and is printed in the Single Appendix at 17-19.

JURISDICTION

The jurisdiction of this Court to review by writ of certiorari the decision of the Supreme Court of the State of Louisiana is conferred by 28 U.S.C. §1257(3). The

decision of the Supreme Court of the State of Louisiana was entered on November 6, 1972 and petition for a writ of certiorari was docketed by this Court on February 5, 1973, within the delays provided by 28 U.S.C. §2101(c) and Rule 34.1 of this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This matter involves Section One of the Fourteenth Amendment to the United States Constitution and Articles 3501, 3506, and 3571 of the Louisiana Code of Civil Procedure. The Louisiana statutes are set out verbatim along with other closely related provisions of the Louisiana Civil Code and the Louisiana Code of Civil Procedure in Appendix "A": Statutes. Section One of the Fourteenth Amendment to the United States Constitution provides:

United States Constitutional Amendment XIV

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

QUESTION PRESENTED

Whether the Louisiana procedure of sequestration violates the due process clause of the Fourteenth Amendment to the United States Constitution by

providing for the deprivation by judicial order of property purchased on credit and by failing to provide to the instalment buyer of the property prior notice and an opportunity for a hearing.

STATEMENT OF THE CASE

On February 2, 1972, W.T. Grant Co. (hereinafter "Grant" or "plaintiff"), a chain store retailer of general merchandise, initiated this action by filing a petition in the First City Court for the City of New Orleans (hereinafter "City Court") alleging $574.17 "past due and owing" upon a series of purchases of four appliances made by defendant Lawrence Mitchell (hereinafter "Mitchell" or "defendant") between August 1969 and April 1971. Grant's petition requested a judgment in the amount of $574.17 with legal interest, a recognition of Grant's "vendor's lien," and a writ of sequestration "to protect plaintiff's interest in the matter." (A.3-4, R.1, p.1).

The second page of the petition filed by Grant contained a verification of the petition, an affidavit by Grant's credit manager and an order authorizing the issuance of a writ of sequestration and requiring Grant to furnish security in the amount of $1125.00. (A.4-5, R.1, p.2). On the same day Grant filed a surety bond in the amount of $1125.00 (A.6) and three exhibits which purport to be contract forms prepared to reflect the terms of the sale. (R.3, pp.1,2,3). The record discloses no further showing to the City Court on that date.[1] Upon those documents and without any notice to Mitchell, the City Court judge signed the order authorizing the requested sequestration and the bond.

[1] The plaintiff's petition (A. 3) refers to "the itemized statement hereto annexed," but it apparently was not annexed and does not appear in the record.

On February 18, 1972, the constable of the City Court served upon Mitchell at his residence the citation (A.11-12), Grant's petition (A.3-4), and the writ of sequestration. (A.9-10). At the same time, the constable seized the refrigerator, stove, stereo phonograph and clothes washer which had been sold to Mitchell by Grant. (Petitioner's Brief, Appendix "B"). Mitchell's appliances were loaded onto Grant's truck and taken to Grant's place of storage. (Petitioner's Brief, Appendix "C").[2]

On March 3, 1972, Mitchell moved the City Court to dissolve the writ of sequestration asserting *inter alia* that the seizure of his stove, refrigerator, stereo phonograph and clothes washer without prior notice and hearing deprived him of procedural due process as guaranteed by the United States Constitution. (A.13-14). An adversarial hearing on Mitchell's motion to dissolve the writ of sequestration was set for March 14, 1972 (A.15), and Grant was notified of the hearing. (R.6, p.5).

On March 14, 1972, no evidence or testimony was introduced before the City Court judge as counsel entered into a joint stipulation: "It is stipulated that the vendor's lien did exist on the items." (A.16).

On March 16, 1972, the City Court entered its judgment denying the motion to dissolve "after examining the pleadings, considering the joint stipulation of counsel, and the oral argument. . . ." (A.17). The City Court assigned "Reasons For Judgment" which provide, in part:

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[2]In the lower courts, counsel believed and asserted that these events had occurred on February 7, 1972. Further inquiry into the record has resulted in the discovery that the date of service and seizure was February 18, 1972. *See* Petitioner's Brief, Appendices "A" and "B".

> The Court is of the opinion that the provisional seizure enforced through sequestration was not a denial of due process and, in this instance, did not impinge upon defendant's constitutional rights. (A.18-19).

Mitchell requested the Court of Appeal for the Fourth Circuit of Louisiana to exercise its supervisory jurisdiction to review the decision of the City Court refusing to dissolve the sequestration (R.12), but the Court of Appeal denied Mitchell's application finding "no abuse of discretion or other error. . . ." (A.20-21).

On April 20, 1972, Mitchell requested the Supreme Court of Louisiana to exercise its supervisory jurisdiction to review the decision of the City Court. The Supreme Court of Louisiana granted Mitchell's request to exercise its supervisory jurisdiction on April 25, 1972. (R.16). On November 6, 1972, the Supreme Court of Louisiana affirmed the ruling of the lower courts by holding *inter alia* that there was no violation of procedural due process rights. *W.T. Grant Co. v. Lawrence Mitchell*, 263 La. 627, 269 So.2d 186 (1972). (A.22-35).

On February 5, 1973, a petition for a writ of certiorari was filed in this Court and certiorari was granted on May 14, 1973. *Mitchell v. W.T. Grant Co.*, ___ U.S. ___, 93 S.Ct. 2276 (1973). (A. 37).

SUMMARY OF ARGUMENT

Lawrence Mitchell was deprived of a refrigerator, stove, clothes washer and phonograph by a judicially authorized seizure without any advance notice and without any opportunity for a prior hearing. That seizure constituted a deprivation of property in violation of the requirements of the due process clause of the Fourteenth Amendment to the United States Constitution.

The requirement of affording notice and an opportunity for a hearing before one is deprived of property is fundamental to our concepts of justice and rooted in the power of courts to adjudicate. *The Mary*, 13 U.S. (9 Cranch) 126 (1815). The due process requirement of prior notice and hearing has allowed only one narrow exception and that exception is applicable only in the most extraordinary of circumstances. *Fuentes v. Shevin*, 407 U.S. 67, 90 (1972). The Louisiana procedure of sequestration violates the due process requirement that notice and hearing be afforded prior to the deprivation of property, and the Louisiana sequestration statutes are not narrowly tailored to come within the "extraordinary situation" exception to due process. The procedure is broadly available to every seller with regard to every credit sale in Louisiana.

The Louisiana procedure of sequestration is an *ex parte* process by which a claimant may obtain the seizure by a court officer of goods in the possession of the defendant. The seizure is predicated upon the plaintiff's interest in the property, the defendant's possession or "power" over the property, and the filing of an action by the plaintiff against the possessor of the property. La. Code Civ. Pro., Art. 3571. In addition, the plaintiff is required to file a surety bond and to verify by affidavit the grounds upon which the sequestration is based. La. Code Civ. Pro., Art. 3501. The sequestration requirement that the plaintiff have an interest in the property to be seized may be satisfied by the vendor's privilege, and the vendor's privilege is an unrecorded security device that arises in the favor of every Louisiana seller upon the sale of property on a credit basis. La. Civ. Code, Art. 3227. There are no other criteria for the *ex parte* issuance of a writ of sequestration, and the procedure is so

ordinary that Louisiana district court clerks may authorize the writ except in Orleans parish. La. Code Civ. Pro., Art. 283(2). There are no constitutionally significant distinctions between the procedure of sequestration and other procedures which have been found by this Court to violate due process.

The statutory replevin procedures of Florida and Pennsylvania found unconstitutional in the decision of this Court in *Fuentes v. Shevin* are constitutionally indistinguishable from the Louisiana sequestration procedure. However, unlike that case, in this case the defendant has full legal title to the goods which were seized, and the seller has never asserted a contractual waiver of the buyer's due process protections. As in *Fuentes v. Shevin*, the plaintiff in this case had only to make a *pro forma* showing by verified petition and conclusory affidavit to obtain the seizure. Although the seizure was authorized by a judge in this case, the authorization involved no real judicial scrutiny. Although there was a delay between the authorization of the seizure and the actual seizure, there was no attempt to notify the defendant of the authorization. Although a surety bond was required of the plaintiff, the bond may have lacked prophylactic effect as the surety could be any person and could be replaced even if proven to be of insufficient solvency in an adversarial hearing.

The only recognized grounds under Louisiana law for attacking the validity of the seizure would be the plaintiff's failure to file the action or affidavit in proper form, the plaintiff's lack of an ownership, possessory or security interest in the disputed property, or the defendant's lack of possession of the disputed property. The validity of the plaintiff's underlying claim is irrelevant to the issue of the validity of the seizure until the trial on the merits.

Thus, such issues as the defendant's liability and default as well as any defenses or counterclaims available to the defendant are not to be considered in the issuance or dissolution of the seizure. Such issues are, under Louisiana law, properly considered only at a trial on the merits and may defeat the seizure at that time. However, neither the hearing on the motion to dissolve the sequestration nor the trial on the merits meet the requirements of due process. Both occur subsequent to the actual deprivation of property and are therefore constitutionally deficient.

The statutory criteria for the issuance of a writ of sequestration are not susceptible to a narrowing construction so as to fit within the "extraordinary situation" exception to the requirements of due process. *Fuentes v. Shevin, supra* at 90-93. Sequestration serves a private and not a governmental need. Sequestration is not limited to special situations demanding prompt action. There is no effective state review or evaluation of the decision to grant a writ of sequestration. The decision of the Louisiana Supreme Court in this very case makes it clear that the threat of *ex parte* seizure by the process of sequestration exists in every Louisiana credit sales transaction. *W.T. Grant Co. v. Mitchell*, 263 La. 627, 269 So.2d 186 (1972). (A.23).

Even if it were assumed to be within the power of a private litigant to do so, the constitutional defects in the sequestration statutes were not cured by the manner in which the plaintiff proceeded. Due process requires that notice and hearing be provided by statute and not by the grace of the party employing the statute. *Coe v. Armour Fertilizer Works*, 237 U.S. 413, 422-3 (1915). However, no prior notice and hearing were afforded to the defendant. Although plaintiff requested the sequestration on the basis of an averment of "fear" that defendant will encumber, alienate,

or otherwise dispose of the goods during the suit, that averment was legally superfluous under Louisiana law to the issuance of the writ. The averment was merely *pro forma*, conclusory, legal jargon, and it was abandoned by the plaintiff at the earliest possible moment. Neither the procedure of sequestration nor the facts of this case come within any exception to the requirement of prior notice and hearing. Sequestration as provided by statute and as employed in this instance is clearly contrary to the holding of this Court in *Fuentes v. Shevin* and the long line of cases on which *Fuentes* was based.

ARGUMENT

I.

THE LOUISIANA PROCEDURE OF SEQUESTRATION VIOLATES DUE PROCESS BY PROVIDING FOR THE DEPRIVATION BY JUDICIAL ORDER OF PROPERTY PURCHASED ON CREDIT WITHOUT ALLOWING THE INSTALMENT BUYER OF THE PROPERTY PRIOR NOTICE AND OPPORTUNITY FOR A HEARING.

A. Due Process Requires That An Individual Be Afforded Notice And An Opportunity To Be Heard Prior To The Deprivation Of His Property.

From the earliest days in our constitutional history, this Court has recognized time and again that it is absolutely fundamental to our adversarial legal system that "deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 313 (1950).

As the Court stated in *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972), due process not only ensures "abstract fair play to the individual," but also minimizes "substantially unfair or mistaken deprivations of property." This doctrine of notice and opportunity for a hearing prior to seizure of property represents inherent fairness and is in harmony with basic precepts of Anglo-American jurisprudence.

This principle is so fundamental that it was promptly incorporated into the Fifth Amendment and later into the Fourteenth Amendment to the United States Constitution: ". . . nor shall any State deprive any person of life, liberty, or property without due process of law. . . ." U.S. Const. Amend. XIV, §1. Due process is so entrenched in our tradition and conscience that, in its early decisions, this Court relied upon natural law to find that an individual's right to notice and opportunity for a hearing was essential to a court's jurisdictional power to adjudicate. *See, e.g., Harris v. Hardeman*, 55 U.S. (14 How.) 334 (1852); *Hollingsworth v. Barbour*, 29 U.S. (4 Pet.) 466 (1830); *The Mary*, 13 U.S. (9 Cranch) 126 (1815).

It is also well established that the opportunity to be heard required by due process "must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). As has been asserted in a consistent line of cases stretching back over a hundred years, in order to be constitutionally "meaningful," the opportunity to be heard must precede any actual deprivation of private property. *Covey v. Town of Somers*, 351 U.S. 141 (1956) (tax lien forclosure); *New York v. N.Y., N.H. & H. Ry. Co.*, 344 U.S. 293 (1953) (creditor's claims against a bankrupt); *Mullane v. Central Hanover Bank and Trust Co., supra* (settlement of a common trust fund); *Griffin v. Griffin*,

327 U.S. 220 (1946) (accrued alimony judgment); *Opp Cotton Mills v. Administrator*, 312 U.S. 126 (1941) (minimum wages); *West Ohio Gas Co. v. P.U.C. of Ohio*, 294 U.S. 63 (1935) (gas rates); *United States v. Illinois Central R.R. Co.*, 291 U.S. 457 (1934) (railroad rates); *Southern Ry. Co. v. Virginia*, 290 U.S. 190 (1933) (administrative termination of a railroad grade crossing); *Goldsmith v. U.S. Board of Tax Appeals*, 270 U.S. 117 (1926) (rejection of admission to bar); *Coe v. Armour Fertilizer Works*, 237 U.S. 413 (1915) (execution against stockholder for unpaid stock subscription); *Londoner v. Denver*, 210 U.S. 373 (1908) (tax assessment for improvements); *Central of Georgia Ry. Co. v. Wright*, 207 U.S. 127 (1907) (tax assessment); *Roller v. Holly*, 176 U.S. 398 (1900) (adequacy of notice period); *Hovey v. Elliott*, 167 U.S. 409 (1897) (court struck defendant's answer); *Scott v. McNeal*, 154 U.S. 34 (1894) (appointment of administrator and sale of estate of living person); *Windsor v. McVeigh*, 93 U.S. (3 Otto) 274 (1876) (condemnation of enemy property); *Ray v. Norseworthy*, 90 U.S. (23 Wall.) 128 (1875) (creditor of bankrupt); *Rees v. City of Watertown*, 86 U.S. (19 Wall.) 107 (1874) (apportionment of municipal debt); *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223 (1864) (creditor of bankrupt).

In recent decisions, this Court has clearly continued and reinforced this constitutional requirement of prior notice and hearing in a variety of contexts. *Fuentes v. Shevin*, 407 U.S. 67 (1972) (statutory replevin); *Bell v. Burson*, 402 U.S. 535 (1971) (administrative suspension of driver's license); *Boddie v. Connecticut*, 401 U.S. 371 (1971) (divorce proceedings); *Wisconsin v. Constantineau*, 400 U.S. 433 (1971) (termination by police chief of public drinking privileges); *Goldberg v. Kelly*, 397 U.S. 254 (1970) and *Wheeler v. Montgomery*, 397 U.S. 280

(1970) (administrative termination of welfare benefits); *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969) (prejudgment garnishment); *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100 (1969) (liability of absent parent corporation); *Armstrong v. Manzo, supra* (child adoption proceedings); *Willner v. Committee on Character and Fitness*, 373 U.S. 96 (1963) (rejection of admission to bar); *Schroeder v. New York*, 371 U.S. 208 (1962) (condemnation).

The Fourteenth Amendment does not impose a straitjacket upon the specific types or forms of procedures which a state may employ to meet the requirements of the due process clause. *Fuentes v. Shevin, supra* at 82; *Boddie v. Connecticut, supra* at 378; *Mullane v. Central Hanover Bank and Trust Co., supra* at 313. The state may balance the various interests at stake in determining whether the form of a notice and a hearing is appropriate to the interests to be affected. *Cf. Lindsey v. Normet*, 405 U.S. 56 (1972). But the proper time for such notice and hearing is not subject to legislative balancing.

The Louisiana sequestration procedure fails to meet the constitutional standard of due process since a defendant is afforded no notice or opportunity for a hearing prior to deprivation of his property. If the statute had provided notice and hearing prior to deprivation, then the balancing test would be appropriate to determine the propriety of that notice and hearing. However, the Louisiana sequestration statute does not require and Mitchell was not given notice or hearing prior to seizure. The balancing test is therefore inappropriate in the instant case.

This Court has made it clear that even a temporary, nonfinal deprivation of property is a "deprivation" within the meaning of the Fourteenth Amendment.

Fuentes v. Shevin, supra at 85; *Bell v. Burson, supra* at 539; *Sniadach v. Family Finance Corp., supra* at 339. Furthermore, "any significant property interest" is protected by the requirements of due process. *Boddie v. Connecticut, supra* at 379. *See Bell v. Burson, supra* at 539; *Goldberg v. Kelly, supra* at 262. Thus, as in *Sniadach* and *Fuentes*, a defendant's interest in the continued possession and use of goods qualifies as a significant property interest and the deprivation of such a property right must be preceded by notice and hearing consonant with due process standards. In such a situation it has been held to be constitutionally irrelevant who has legal title to the goods and whether or not they are absolute necessities of life. *Fuentes v. Shevin, supra* at 86, 88. *See Bell v. Burson, supra* at 539 (suspension of driver's privileges).

However, in the present case, the dispossessed party not only has an interest in the continued possession and use of the goods, but he also has full legal title under Louisiana law, which prohibits conditional sales.[3] In addition, it should be noted that the defendant has been deprived of goods—a stove, refrigerator, clothes washer and stereo—most of which can undoubtedly be defined as necessities.

To be meaningful, notice and hearing must be offered "at a time when the deprivation can still be prevented." *Fuentes v. Shevin, supra* at 81. A procedure which requires prior notice and a hearing in front of a judge automatically provides protection against arbitrary or

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[3]*See, e.g., Thomas v. Philip Werlein, Ltd.*, 181 La. 104, 158 So. 635 (1935); *Givens v. Southern Farm Bureau Casualty Ins. Co.*, 197 So.2d 380, 382 (La. App. 1967) ("Thus, where an act of sale of movables consummated in Louisiana stipulates that title will not pass until the price has been paid, that condition is without effect and title passes subject to the seller's vendor's lien and chattel mortgage, if any, securing the deferred part of the purchase price.")

mistaken deprivations of property by private parties. *Fuentes v. Shevin, supra* at 81; *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 170-72 (1951) (Frankfurter, J., concurring). A prior hearing protects the creditor against possible damage liability for wrongful taking of property. The limited and expensive resources of the court's officers can also be conserved by eliminating potentially unwarranted and arbitrary seizures. By establishing procedures for prior notice and hearing, the state retains supervision over the repossession process and does not abdicate its control to private individuals. Furthermore, a defendant who is not searching for immediate replacements for the seized property can more effectively prepare a defense and participate in the adversary process or concentrate on alternative arrangements. *See Sniadach v. Family Finance Corp., supra* at 340-42; *Goldberg v. Kelly, supra* at 264.

A bond requirement, conclusory allegations, and possible liability in damages are clearly not a substitute for a hearing prior to seizure of property. As this Court has recognized in *Fuentes v. Shevin, supra* at 83, these requirements "test no more than the strength of the applicant's own belief in his rights." Plaintiffs are fallible, especially when private gain is at stake. Many seizures may go unchallenged because the defendant seeks not a lawsuit but alternative arrangements to fulfill the needs of his family. Only a pre-seizure hearing can provide an effective opportunity to stop unwarranted and arbitrary deprivations of property.

B. The Louisiana Procedure of Sequestration Allows A Credit Seller To Obtain A Judicially Authorized Seizure Of Property *Ex Parte* And Without Prior Notice And Hearing To The Owner Of The Property.

The Louisiana procedure
plaintiff to obtain the seizu
initiating a lawsuit or sho
lawsuit.[4] Seizure pursuant t
upon the plaintiff's claim to
security interest in proper
sion.[5] The present sequestra
1960 as a part of the revis
entire procedural law of Lo
tion has traditionally be
"conservatory" indicating
being temporarily placed i
amendments liberalizing se
readily available to plaintif
plaintiff to obtain immedia
seized have altered the prop

The basis of defendant'
sequestration is the failure
notice and hearing to the c

re of sequestration permits a
ure of property at the time of
ortly prior to the filing of a
to sequestration is predicated
to an ownership, possessory or
rty in the defendant's posses-
ration statutes were enacted in
ision and recodification of the
ouisiana.[6] Although sequestra-
een labeled "provisional" or
that the property seized was
in the custody of the court,
sequestration to make it more
iffs and practices allowing the
iate possession of the property
priety of those labels.

t's constitutional attack upon
e of that procedure to provide
defendant prior to the seizure

[4] *See generally* Johnson, "A
visional Remedies Under the L
38 Tulane L. Rev. 1 (1963).

Attachment and Sequestration: Pro-
Louisiana Code of Civil Procedure,"

[5] La. Code Civ. Pro., Art. 35
in the property to be seized d
other two principal methods of
attachment and executory proc
a fraudulent or some other anti
the creditor will be placed at
La. Code Civ. Pro., Art. 3541. *S*
La. Code Civ. Pro., Arts. 3501
4-5. Executory process is p
judgment contained in a mortg
et seq. See also L'Enfant, "*Fi*
Process and Louisiana Creditor
(1972).

571. The requirement of an interest
distinguishes sequestration from the
of prejudgment seizure in Louisiana,
cess. Attachment is predicated upon
ticipated act of the debtor by which
t a disadvantage pending judgment.
See also "Preliminary Statement" to
01 *et seq.*; Johnson, *supra* note 4, at
predicated upon a confession of
gage. La. Code Civ. Pro., Arts. 2631
Fuentes v. Shevin: Procedural Due
or's Remedies," 33 La. L. Rev. 62

[6] *See* Johnson, *supra* note 4, a
, at 1-3.

of property in his possession. This aspect of sequestration—lack of prior notice and hearing—has been explicitly recognized by the Louisiana Supreme Court:

> When the writ of sequestration issues ex parte upon the sworn allegations of the applicant, seizure of the property takes place immediately without any advance notice to him [the defendant]. Since he is unaware of the proceedings until after the seizure, he is totally without power to prevent its accomplishment. If the seizure is unlawful all defendant can do is retain counsel and move for its dissolution and seek damages and attorney's fees. *Hancock Bank v. W.R. Alexander*, 256 La. 643, 653, 237 So.2d 669, 672 (1970).

Because of the lack of prior notice and hearing, the Louisiana Supreme Court held the statutory requirements must be strictly construed, and the plaintiff may not amend his pleadings to conform to those requirements after the seizure took place.

In its opinion in this case, the Louisiana Supreme Court implicitly acknowledges the lack of a prior notice and hearing requirement in the sequestration statutes. The issue, then, is not whether the procedure of sequestration provides prior notice and hearing, but whether the procedure satisfies the constitutional requirement of due process on some other grounds. For the answer to this, a fuller explanation of sequestration is necessary.

The issuance of the writ of sequestration is predicated upon some interest of the plaintiff in property in the possession of the defendant. Grant's interest in the property seized was its vendor's privilege. (A.16). The vendor's privilege is an unrecorded security interest in goods sold on a credit basis and attaches automatically by operation of Louisiana Civil Code, Article 3227. Gener-

ally, the vendor's privilege continues in effect only as long as the collateral is in the possession of the buyer.[7] While the property is in the possession of the buyer, the vendor's privilege provides the seller with a high preference upon the collateral against other creditors. Because the vendor's privilege arises by operation of law, every Louisiana credit seller has this security interest. Other security devices are available to the Louisiana credit seller[8] and sequestration may issue upon the assertion of other types of interests in the property in dispute, as well.

The sole substantive criteria for the issuance of sequestration are found in Louisiana Code of Civil Procedure, Article 3571: (1) the plaintiff must have a legal interest in the property and (2) in the case of movable goods, the defendant must have possession of or "power" over the goods to be seized.[9] In addition, Louisiana Code of Civil Procedure, Articles 3501 and

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[7]La. Civ. Code, Arts. 3227 and 3228. *See also* Comment, "Vendor's Privilege," 4 Tulane L. Rev. 239 (1930) (Notes the ability of the vendor in certain situations to assert the privilege upon the collateral even after the vendee gives up possession of the collateral); A. Yiannopoulos, *Louisiana Civil Law Treatise on Property* §108 (1967).

[8]*E.g.*, La. Rev. Stats. §§9:5351 *et seq.* (Louisiana Chattel Mortgage Act); La. Civ. Code, Art. 3133 (Pledge or "layaway" in commercial jargon).

[9]Louisiana Code of Civil Procedure, Article 3571:

Article 3571. Grounds for sequestration

When one claims the ownership or right to possession of property, or a mortgage, lien, or privilege thereon, he may have the property seized under a writ of sequestration, if it is within the power of the defendant to conceal, dispose of, or waste the property or the revenues therefrom, or remove the property from the parish, during the pendency of the action.

3502 require that a lawsuit be filed at the time of applying for the seizure or at a later time if permitted by the court. In the instant case, these requirements were met by the verified, general allegations of the petition and the averments of the attached affidavit to the effect that the plaintiff had a vendor's privilege as a result of the sale of goods to the defendant and that there existed a balance due on the goods. (A.3).

In addition, the plaintiff is required to furnish security in an amount sufficient to protect the defendant against wrongful issuance of a writ of sequestration. La. Code Civ. Pro., Art. 3574. Although the procedure requires the issuing official to set the amount of the bond to be filed, there is no requirement that the official test the surety on the bond as this is ordinarily an adversarial process.[10]

The authorization of the writ of sequestration is a ministerial act. When presented with an affidavit or verified petition and bond, both in the proper form, the issuing official is required to issue a writ of sequestration. In a suit seeking sequestration pursuant to a vendor's privilege and seeking the balance alleged to be due on an open account, the plaintiff was awarded a writ of mandamus compelling the trial judge to issue a writ of sequestration. The Louisiana Supreme Court held in that case, *Zion Mercantile Co. v. Pierce*, 163 La. 477, 480, 112 So. 371 (1927):

> It was the mandatory duty of the judge to sign the order [authorizing sequestration] when presented to him with the proper affidavit and bond, and his refusal to do so cannot be justified on the ground

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[10] La. Code Civ. Pro., Arts. 5121 *et seq.*

that the petition for the writ had not been filed by the clerk of his court.[11]

Another factor indicating the ministerial nature of the authorization is the provisions of Louisiana Code of Civil Procedure, Articles 282(1) and 283(2) which permit clerks of district courts to fix the amount of the bond and to grant the issuance of a writ of sequestration in parishes other than Orleans.[12]

Once the sequestration is authorized, the actual writ of sequestration (in this case a form supplied by the clerk) is signed by the clerk and delivered to the constable who performs the seizure. In this case, the property was "hauled" and "stored" by Grant, who apparently acted as the constable's "keeper." (Petitioner's Brief, Appendix "C").[13] If necessary, the seizing officer may, pursuant to Louisiana Code of Civil Procedure, Article 325, use force to accomplish a seizure.[14] The seizing officer is then

[11] *But cf. Barrow v. Duplantis*, 147 La. 461, 85 So. 205 (1920) which held that the issuance of a writ of judicial sequestration by the court on its own motion was discretionary and that mandamus would not lie to compel its issuance.

[12] Comment (b) to La. Code Civ. Pro., Art. 282 provides: "This article and Art. 283, *infra*, confer on the clerk of a district court the power and authority to do certain acts, and render and sign certain orders and judgments, which normally are done by the judge himself. Most of these are of a ministerial nature, while the remainder, although involving the exercise of some discretion cannot be classified as strictly judicial." Louisiana Code of Civil Procedure, Article 281 excludes the clerks of the district court for the Parish of Orleans from the provisions of Article 282.

[13] *See generally Bickham Motors v. Crain*, 185 So.2d 271, 275-6 (La. App. 1966) (Explains the duties and liabilities of a plaintiff who acted as the sheriff's "keeper" of the property seized in an executory proceeding, but who allowed the property to deteriorate in value).

[14] Force was not used in this case.

required by Louisiana Code of Civil Procedure, Article 3504 to deliver to the clerk a return showing the manner of execution of the writ and an inventory of the property which was seized. (Petitioner's Brief, Appendices "B" and "C"). As a matter of practice and convenience, the constable serves the defendant with the citation and petition at the time of the seizure. Thus, the first notice the defendant receives of the authorization of the seizure of his property is the constable's knock on the door.

In order to more fully explain the nature of the sequestration procedure, a discussion of the post-seizure sequestration provisions follows. However, by discussing the post-seizure provisions, defendant in no way intends to intimate that such post-seizure provisions could cure the unconstitutional defect of lack of prior notice and hearing. The post-seizure provisions are constitutionally irrelevant and are discussed solely to further illuminate the nature of Louisiana sequestration procedure and what transpired below.

After the seizure has taken place, the statutory scheme affords several options to the plaintiff and defendant. If the defendant can prove in an adversarial hearing that the property seized exceeds the value of the plaintiff's claim, the defendant may obtain a release of the excess property seized. La. Code Civ. Pro., Art. 3505. If the defendant can provide security by a licensed surety or a surety of solvency satisfactory to the constable "for the satisfaction of any judgment which may be rendered against him," he may obtain a release of the property. La. Code Civ. Pro., Arts. 3507 and 5127. If the defendant does not obtain a release pursuant to Louisiana Code of Civil Procedure, Article 3507 within ten days of the seizure, the plaintiff may obtain a release of the property by posting security. La. Code Civ. Pro., Art. 3576. The plaintiff's security undertaking is not released until the

plaintiff obtains a final, non-appealable judgment in his favor. If the defendant fails to file responsive pleadings or take an appeal, the plaintiff may obtain a default judgment within five days of service upon the defendant and the delay for an appeal may expire in as little as thirteen days. La. Code Civ. Pro., Art. 5002. The property seized is not to be sold until after final judgment. La. Code Civ. Pro., Art. 3510.

The preceding aspects of the post-seizure statutory scheme do not appear to be always followed in practice, however. In the instant case, the collateral was immediately taken into the plaintiff's possession, although the constable may have retained legal, constructive custody of the goods. (Petitioner's Brief, Appendices "B" and "C"). The requirement that the plaintiff obtain a final judgment prior to selling the seized property may not always be followed. In *Patterson v. Western Auto Supply Co.*, 125 So.2d 611 (La. App. 1961), the plaintiff, expecting a negotiated settlement, sold the sequestered property prior to obtaining a judgment thereby losing his right to a judgment for any deficiency between the price of the goods and the balance of his claim. The defendant's right to a reduction of an excessive seizure depends upon the doubtful possibility of ascertaining the value of used property and then dividing the excess from the remainder of the property. The security required of a defendant to obtain a release of the property seized is so great an undertaking–the amount of any judgment that could be rendered against him as opposed to the amount of any possible deterioration in the value of the property–as to be prohibitive, particularly for a low income buyer.[15]

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[15] *See Fuentes v. Shevin, supra* at 84 n. 14.

In practice, the most frequently employed post-seizure procedure and the one used by Mitchell is the adversarial hearing upon the defendant's motion to dissolve the writ of sequestration. Article 3506 of the Louisiana Code of Civil Procedure provides, in relevant part:

> The defendant by contradictory motion may obtain the dissolution of a writ of attachment or of sequestration, unless the plaintiff proves the grounds upon which the writ was issued.[16]

The burden of proving the grounds for issuance of sequestration is clearly upon the plaintiff who provoked the seizure. To "prove the grounds upon which the writ was issued," the plaintiff must satisfy the requirements of Louisiana Code of Civil Procedure, Article 3571 by proving his interest in the property seized,[17] the defend-

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[16] This provision changed the pre-1960 case law which had placed the burden of proof upon the defendant attacking the sequestration. The burden of proving the grounds for issuance is now clearly upon the plaintiff who obtained the seizure. *See* Comment (a) to La. Code Civ. Pro., Art. 3506; Johnson, *supra* note 4, at 26-27. *See also Charles A. Kaufman Co. v. Gregory*, 244 La. 766, 772, 154 So.2d 392, 395 (1963) (Discussing the manner of proceeding on a motion to dissolve an attachment, the Louisiana Supreme Court states: "[T]his order and burden of proof have been changed by the enactment of Article 3506 of the Louisiana Code of Civil Procedure.")

[17] *See, e.g., Merchant's & Farmer's Bank v. Fischer Lumber Co.*, 136 La. 860, 67 So. 932 (1915) (Seizing party failed to establish his privilege on the property seized); *American Furniture Co. v. Grant-Jung Furniture Co.*, 50 La. Ann. 931, 24 So. 182 (1898) (Seller not entitled to sequestration as seller did not have a vendor's privilege on goods sold in another state); *Queen City Broadcasting Co. v. Wagenwest, Inc.*, 264 So.2d 336 (La. App. 1972) (Plaintiff lacked a valid lien, privilege or chattel mortgage on the property.)

ant's "power" over the property,[18] and the formal adequacy of the affidavit and bond.[19] If the plaintiff proves the grounds for the issuance of the writ of sequestration, the sequestration is maintained, and the

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[18] *See, e.g., Montagne v. Tinker*, 197 So.2d 154, 156 (La. App.), *writ refused*, 250 La. 916, 199 So.2d 921 (1967) ("We think the plaintiffs have sufficiently alleged the grounds relied upon for the issuance of the writ. They have alleged the lease; that $1400 in rent is due; and that they have a lessors' privilege 'on the movable effects of the lessee which are on the leased premises.' Although they have not expressly used the language of LSA–C.C.P. Article 3571 that 'it is within the power of the defendant' to conceal, etc., they have alleged that they have a lessors' privilege on the 'movable effects of the lessee which are on the leased premises.' The facts that the items are movable, that they belong to the lessee and are located on the leased premises, give rise to the conclusion that 'it is within the power of the defendant' to conceal, dispose of, etc. the property. To allege simply that 'it is within the power of the defendant' would be only a conclusion of fact. Plaintiffs have alleged the specific facts on which such a conclusion is based."); *Ralph's Fleet, Inc. v. American Marine Corp.*, 157 So.2d 317 (La. App. 1963) (Sequestration dissolved upon defendant's showing that it never had possession of the property seized and never disputed the plaintiff's ownership of that property.)

[19] *See, e.g., Hancock Bank v. W.R. Alexander*, 256 La. 643, 237 So.2d 669 (1970) (Louisiana Supreme Court ordered dissolution of writ of sequestration because of the failure of plaintiff to plead his interest in the property seized. The Court also refused to allow the plaintiff to amend the suit to reflect plaintiff's chattel mortgage.); *Fidelity & Casualty Co. of N.Y. v. Harris-Smith, Inc.*, 211 So.2d 339 (La. App. 1968) (Writ of sequestration dissolved as sheriff failed to make an inventory of the property seized.) *But cf. Blitz v. Guenin*, 187 So. 690 (La. App. 1939) (A prior seizure by sequestration had been dissolved as the amount in controversy exceeded the limited jurisdiction of the trial court. The plaintiff instituted a new action within the court's jurisdictional amount and obtained a second sequestration of the property prior to its return to the defendant.)

plaintiff may obtain a sale of the property if he prevails at a trial on the merits. La. Code Civ. Pro., Art. 3510.

Unless relevant to the grounds for the issuance of the writ, the merits of the plaintiff's claim and the claims and defenses of the defendant are reserved until a trial on the merits. Comment (c) to Article 3506 of the Louisiana Code of Civil Procedure states:

> (c) This article retains the jurisprudential rule that only the grounds for the auxiliary remedy can be inquired into on the motion to dissolve, and not the merits of the main demand. (Citations omitted)[20]

Clearly the procedure of sequestration is available to effect a seizure of goods without prior notice and hearing. It is available to all who claim an interest in property in the hands of another. The procedure is available in every credit sales transaction in Louisiana as every credit sale gives rise to a vendor's privilege. Sequestration affords some post-seizure protections to the defendant, but those post-seizure protections are constitutionally inadequate as they come too late.

Grant, in arguing the constitutionality of sequestration, has asserted that despite the lack of prior notice and hearing, sequestration satisfies due process since it is a "procedural right of long standing." However, the modern procedure of sequestration is not truly ancient. It bears marked differences from its historical antecedents.[21] One principal difference is that a plaintiff seeking sequestration is no longer required to show "a reasonable basis to fear" that the defendant will remove, destroy or

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[20] *See also Tucker & Schonekas v. Dohmann Chevrolet, Inc.*, 260 So.2d 99 (La. App.), *writ refused*, 261 La. 1048, 262 So.2d 37 (1972).

[21] *See generally* Millar, "Judicial Sequestration in Louisiana: Some Account of Its Sources," 30 Tulane L. Rev. 201 (1956).

conceal the property to be seized during the pendency of the suit.[22] This requirement was an integral part of Roman, French and Spanish antecedents of modern Louisiana sequestration.[23] The "fear" criteria for the issuance of sequestration was in effect deleted from Louisiana sequestration by statute in 1912[24] and later by total deletion from the provisions on sequestration.[25] The French action of revendication, which Millar identifies as the prime source for the Louisiana procedure of sequestration,[26] apparently allowed seizure of an instalment buyer's goods only after an adjudication of the right to possession.[27] Even if sequestration was a procedure of long standing, sequestration took on new dimensions in a marketplace where "the use of consumer credit was expanding at an extremely rapid rate."[28] Like the replevin statutes found to be unconstitutional in *Fuentes v. Shevin*, Louisiana sequestration has been subjected to legislative changes which have made the procedure constitutionally intolerable, particularly so when the process of legislative liberalization of the procedure to

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[22] Johnson, *supra* note 4, at 15.

[23] Millar, *supra* note 21, at 206-18.

[24] Louisiana Act No. 190 of 1912 (repealed 1960), quoted at p. 41-2, *infra*. *See also Gueydan v. T.P. Ranch Co.*, 156 La. 397, 401, 100 So. 541, 543 (1924) (Holding that Act No. 190 of 1912 dispensed with the former sequestration requirement that the plaintiff have reasonable grounds to believe that defendant intended to conceal, part with, or dispose of the goods to be seized.)

[25] Comment (a) to La. Code Civ. Pro., Art. 3571.

[26] Millar, *supra* note 21.

[27] A. Yiannopoulos, *supra* note 7, at 385 n. 61.

[28] *Mourning v. Family Publications Service, Inc.*, ___ U.S.___ , 93 S.Ct. 1652, 1657 (1973).

the favor of secured creditors has been at the expense of the due process rights of the burgeoning group of consumers who purchase goods on credit. This Court observed in *Sniadach v. Family Finance Corp.*: "The fact that a procedure would pass muster under a feudal regime does not mean it gives necessary protection to all property in its modern form."[29]

Grant has also argued that the vendor's privilege is a right without a remedy and therefore sequestration must be found to be constitutional to preserve the vendor's privilege. Such an assertion misses the essential nature of a security interest. The vendor's privilege is, more than anything else, a right of preference to the collateral which can be asserted against other creditors of the buyer. Thus, if another creditor obtains a seizure of the collateral which secures the vendor's privilege, the vendor may intervene in those proceedings and assert his right of preference to the proceeds from the sale of the collateral.[30] In addition to sequestration, the vendor has other remedies for a debt which he proves to be due him. The vendor may sue for the balance of the price which is due[31] and is entitled to any deficiency between the price brought by a public sale of the collateral and the amount of his judgment.[32] He may execute his money judgment by writ of *fieri facias* upon any of the judgment debtor's

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[29] *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 340 (1969). *See also Papachristou v. City of Jacksonville*, 405 U.S. 156, 163 (1972); *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375 (1970); *The Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235 (1970); *Smith v. Allright*, 321 U.S. 649 (1943); *Helvering v. Hallock*, 308 U.S. 106 (1939).

[30] La. Code Civ. Pro., Arts. 1092, 2643.

[31] The plaintiff in this case has brought an action for balances due on the purchases. (A. 3-4).

[32] *M. Marx Sons v. Cooper*, 63 So.2d 883 (La. App. 1953).

non-exempt property, and he can obtain a garnishment of the judgment debtor's wages.[33]

Aside from these inconsistencies in the argument that the seller would be remediless without sequestration, that argument misses the thrust of Mitchell's constitutional attack upon sequestration. The defendant is not asserting that security interests or repossessions are unconstitutional. The defendant only requests that the seizure be postponed until the defendant has been given notice and an opportunity for a hearing prior to the seizure. This is the essence of due process and is required by the Fourteenth Amendment.

II.

THE LOUISIANA PROCEDURE OF SEQUESTRATION DOES NOT COME WITHIN THE SINGLE NARROW EXCEPTION TO THE REQUIREMENT OF NOTICE AND HEARING PRIOR TO THE DEPRIVATION OF PROPERTY.

A. Notice and Hearing May Be Postponed Until After a Deprivation of Property Only in Narrowly Confined "Extraordinary Situations."

Only in a few, narrowly confined cases has this Court found a truly "extraordinary situation" which would justify the postponement of notice and hearing until after an actual deprivation of property. This Court has found such an "extraordinary situation" only in cases "where it

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[33] La. Code Civ. Pro., Arts. 2291 *et seq.* (*fieri facias*) and Arts. 2411 *et seq.* (garnishment). *See, e.g., M. Marx Sons v. Cooper*, 63 So.2d 883 (La. App. 1953) (After obtaining a sequestration and favorable judgment, the seller was entitled to a garnishment of the buyer's wages to satisfy a deficiency between the amount of the judgment and the proceeds of the public sale of the collateral.); *Sun Sales Co. v. Hodges*, 224 So.2d 157 (La. App.), *aff'd*, 256 La. 687, 237 So.2d 684 (1967).

is essential that government needs be immediately satisfied." *Phillips v. Commissioner*, 283 U.S. 589, 597 (1931). As an exception to the general mandate of due process, this doctrine has been applied in diverse but strictly limited situations: circumstances demanding immediate action for the health and safety of the general public, *Ewing v. Mytinger & Casselberry, Inc.*, 339 U.S. 594 (1950); *North American Cold Storage Co. v. City of Chicago*, 211 U.S. 306 (1908); measures designed to alleviate emergency conditions of wartime economic instability, *Yakus v. United States*, 321 U.S. 414 (1944); *Bowles v. Willingham*, 321 U.S. 503 (1944); measures necessary to promote the stability of economic institutions, *Fahey v. Mallonee*, 332 U.S. 245 (1947); *Coffin Brothers Co. v. Bennett*, 277 U.S. 29 (1928); proceedings essential to effectuate the goal of a legitimate governmental function, *Anderson National Bank v. Luckett*, 321 U.S. 233 (1944); *Coffin Brothers Co. v. Bennett, supra; Phillips v. Commissioner, supra;* and departures from traditionally accepted forms and procedures to accommodate the efficient functioning of administrative action, *Best v. Humbolt Placer Mining Co.*, 371 U.S. 334 (1963); *Opp Cotton Mills v. Administrator*, 312 U.S. 126 (1941); *Morgan v. United States*, 304 U.S. 1 (1938); *United States v. Illinois Central R.R. Co.*, 291 U.S. 457 (1934).

In *Fuentes v. Shevin*, those decisions were examined and three criteria necessary to the "extraordinary situation" exception to due process were found:

> Only in a few limited situations has this Court allowed outright seizure without opportunity for a prior hearing. First, in each case, the seizure has been directly necessary to secure an important governmental or general public interest. Second, there has been a special need for very prompt

> action. Third, the State has kept strict control over its monopoly of legitimate force: the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance. 407 U.S. 67, 90-91 (footnote omitted).

There may be one other exception to the requirement of prior notice and hearing. This Court has held that a businessman could, after informed negotiation and bargaining, confess judgment in a contract. *D.H. Overmyer Co. v. Frick Co.*, 405 U.S. 174 (1972). In *Fuentes v. Shevin, supra* at 94-96, this Court held that a contractual waiver of procedural due process rights must at the very least be clear and unambiguous, and the Court expressed doubts that a form contract of adhesion could meet constitutional muster even if the contractual waiver were clear. However, in the instant case, a contractual waiver of due process protections has never been asserted or found to be present by any of the lower courts. Since it has never been asserted or found to be present, the contractual waiver issue is not before this Court.

Although the Louisiana Supreme Court did not measure sequestration with regard to all three of the criteria announced in *Fuentes v. Shevin*, it did find that sequestration did meet a single sentence quoted from *Fuentes v. Shevin*. In that sentence this Court stated that "there may be cases in which a creditor could make a *showing* of *immediate danger* that a debtor *will* destroy or conceal disputed goods." *Fuentes v. Shevin, supra* at 93 (emphasis added). The context of that statement clearly shows the sentence to be dictum, and this Court has never upheld a statute upon those grounds alone. However, even assuming that sentence does establish an exception to the requirement of prior notice and hearing, sequestration does not come within the language of that exception.

B. The Louisiana Sequestration Statutes Are Not Narrowly Drawn To Allow the Deprivation of Property Only Upon a Showing of Exceptional Need.

Sequestration was enacted to be, and has been consistently construed to be, a procedure available to one party to obtain the seizure of property without providing notice and a prior hearing to the party in possession of the property. Sequestration is not a narrowly available proceeding. It is clearly available to any plaintiff who believes that he has an interest in the property to be seized, who believes that he has a claim against the defendant, and who is able to file the required security undertaking. Since every Louisiana credit seller has a vendor's privilege, the procedure is available to every credit seller who files a bond and an action asserting that a default has occurred in the transaction.

The decision of the Louisiana Supreme Court in this case clearly indicates that sequestration is not limited to cases of "extraordinary situations." The Louisiana Supreme Court found sequestration was saved from attack by "the *irrefutable* inference that the vendee has, by the act of buying itself, consented to the preservation of the vendor's privilege"[34] and thus theoretically consented to the enforcement of that security device by seizure without prior notice and hearing. This rationale would apply to every credit sale in Louisiana, not simply cases where the seller could show a special need for extraordinary protection. The language of the Court was broad:

> Under Louisiana law, therefore, the purchaser's possession is precarious to this extent: He holds possession with the implied-in-law knowledge that

[34] *W.T. Grant Co. v. Mitchell*, 263 La. 627, 640, 269 So.2d 186, 190-91 (1972) (emphasis added). (A. 29).

> he has acquired the right to possession, subject to the vendor's paramount right to seize the property without hearing should he default in his payments.[35]

Such an irrebuttable presumption of an individual's acquiescence in giving up constitutionally mandated safeguards over property rights is without precedent, and no authority is cited for the "implied-in-law knowledge" rationale. The Louisiana court's "irrefutable inference" flies in the face of this Court's well-defined prohibition against implied waivers of constitutional rights.[36] The "irrefutable inference" creates a conclusive presumption of consent to a patently unconstitutional procedure which runs afoul of this Court's prohibition of conclusive presumptions of critical facts.[37] Indeed, the "implied-in-law knowledge" rationale is so sweeping as to give

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[35] *Id.*, at 641, 269 So.2d at 191. (A. 29).

[36] *See Fuentes v. Shevin, supra* at 94-5; *Swarb v. Lennox*, 314 F. Supp. 1091, 314 F. Supp. 1112 (E.D. Pa. 1970), *aff'd*, 405 U.S. 191 (1972); *D.H. Overmyer Co. v. Frick Co.*, 405 U.S. 174 (1972); *Ohio Bell Telephone Co. v. Public Utilities Comm'n.*, 301 U.S. 292, 307 (1937); *Aetna Ins. Co. v. Kennedy*, 301 U.S. 389, 393 (1937).

[37] *See, e.g., U.S. Dept. of Agriculture v. Murry*, ___ U.S. ___, 41 U.S.L.W. 5099 (June 25, 1973) (Irrebuttable presumption excluding certain persons from the Food Stamp Program because in the previous year they were claimed as dependents by a taxpayer not himself eligible for food stamps); *Vlandis v. Kline*, ____U.S. ___, 37 L.Ed.2d 63 (1973) (Connecticut's irreversible and irrebuttable statutory presumption of the non-residence of certain students for purposes of tuition at state university); *Stanley v. Illinois*, 405 U.S. 645 (1972) (Illinois' irrebuttable presumption that all unmarried fathers are unqualified to raise their children); *Bell v. Burson*, 402 U.S. 535 (1971) (Conclusive presumption that uninsured motorists who cannot post security are at fault in accidents and therefore may have their licenses suspended without a hearing.)

validity to any state law notwithstanding the direct conflict of the state law with the federal constitution. Such a rationale would supply consent and thus validity to the loss of constitutional protection otherwise afforded to the pregnant woman who seeks an early abortion, the convicted felon who is condemned to capital punishment, or the Black who objects to a Jim Crow law. In this particular context, the Louisiana court's rationale requires an abandonment of procedural due process rights by every Louisiana buyer who enters into a credit sales transaction. The abandonment of procedural due process rights would be "irrefutable" no matter how desperately the Louisiana buyer sought to preserve his constitutional rights.

Nowhere in its opinion did the Louisiana Supreme Court impose a narrowing interpretation upon the statute. The statute remains available to any seller who unilaterally determines that a default has occurred in any instalment sale and despite the fact that the seller could be in error[38] or that the buyer could have a defense or

[38] The plaintiff in this case, though of high repute, is fallible. *See, e.g., W.T. Grant Co. v. California Superior Court of Santa Barbara County*, 23 Cal. App.3d 284, 100 Cal. Rptr. 179 (1972) (W.T. Grant Co. could be charged with violation of a criminal statute upon the showing that it sold used televisions as new); *Johnson v. W.T. Grant Co.*, 2 OEO Pov. L. Rep. ¶16,622 (Minn. Dist. Ct. 1973) (W.T. Grant Co.'s coupon credit selling plan violates usury laws); *Walsh v. W.T. Grant Co.*, 241 A.2d 46 (N.J. Dist. Ct. 1968) (Husband not liable on sales contract between his wife and W.T. Grant Co. despite language in the contract to the contrary); *Holmes v. W.T. Grant Co.*, 71 Misc.2d 486, 336 N.Y.S.2d 601 (N.Y. Sup. Ct. 1972) (Execution by W.T. Grant Co. on home of welfare recipient stayed); *Edmonston v. W.T. Grant Co.*, 57 Misc.2d 37, 291 N.Y.S.2d 864 (N.Y. Cty. Ct. 1968) (Customer not liable to seller for credit coupons thrown away and not actually used).

counterclaim.[39] It should be noted that although the Louisiana court appeared to have assumed that a "default" had occurred in the instant transaction, the record would not support that assumption. A unilateral assertion that Mitchell owed money to Grant did appear in Grant's initial pleading filed with the trial court. (A. 3, 4). However, the merits of the plaintiff's action have not been reached by the trial court and the merits of the claim were not relevant to the motion to dissolve the writ of sequestration. Comment (c) to La. Code Civ. Pro., Art. 3506. Mitchell's response to Grant's underlying action and the merits of the case have both been postponed pending the review of the validity of the sequestration.

The refusal of the Louisiana Supreme Court to impose a narrowing construction upon the procedure of sequestration possibly lies in the availability of other creditor remedies under Louisiana law in more narrow circumstances. These other Louisiana remedies also illustrate that these remedies, and not sequestration, are narrowly available only upon a showing of exceptional need. Although these other remedies may not meet the "exceptional situation" criteria of this Court, they do

[39] *See generally Centanni v. A.K. Roy, Inc.*, 258 So.2d 219, 222 (La. App. 1972) ("Where there is an ambiguity in a printed form contract and a court is called upon to interpret their meaning and import, such ambiguity or contradiction is construed against the party who prepared the contract or printed form."); *Jones v. Paul*, 254 So.2d 915 (La. App. 1971) (Improper acceleration of the balance of the payments); *Gordon Finance Co. v. Chambliss*, 236 So.2d 533 (La. App.), *cert. denied*, 256 La. 869, 239 So.2d 364 (1970) (Usury); *Carter v. Forman*, 219 So.2d 21 (La. App. 1969) (Fraud); *Boudreaux v. Allstate Finance Corp.*, 217 So.2d 439 (La. App. 1968) (Debt collection abuses); *Berger v. DeSalvo*, 156 So.2d 323 (La. App.), *writ refused*, 245 La. 86, 157 So.2d 231 (1963) (Rebate of unearned interest); *Bartlett v. Russell*, 142 So.2d 58 (La. App. 1962) (Redhibition); *Air Conditioning Training Co. v. Knouse*, 46 So.2d 665 (La. App. 1950) (No proof of damages).

embody a narrowness not found in sequestration. The Louisiana procedure of attachment is available upon the clear showing that a debtor is concealing himself or his property or is about to dispose of property with fraudulent intent.[40] If the credit seller had no other adequate remedy and was about to suffer irreparable injury, the Louisiana remedy of injunction might be available upon a clear showing of irreparable injury to protect his interests.[41] The creditor has other remedies available to him, such as executory process if he obtained a confession of judgment in a mortgage,[42] *fieri facias* seizure of savings or other property[43] and garnishment of wages.[44]

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[40] La. Code Civ. Pro., Art. 3541. However, even this procedure has been so broadly construed as to diminish the facially extraordinary grounds for its issuance. *See Toups v. Toups Truck & Tractor Service, Inc.*, 238 So.2d 200 (La. App. 1970) (Attachment allowed despite the anticipatory nature of the breach of the contract, the absence of fraudulent intent in the criminal sense, the absence of an acceleration clause in the contract between the parties.)

[41] La. Code Civ. Pro., Arts. 3601 *et seq. See also Amacker v. Amacker*, 146 So.2d 672 (La. App. 1962) (Plaintiff suing to be recognized as the owner of a bank account not entitled to an injunction against defendant prohibiting withdrawal from the account as the plaintiff had recourse to sequestration and had failed to show irreparable harm.)

[42] La. Code Civ. Pro., Arts. 2631 *et seq. See also Ross v. Brown Title Co.*, 356 F. Supp. 595 (E.D. La.), *aff'd*, ___ U.S. ___, 41 U.S.L.W. 3644 (1973) (Executory process found to be constitutional); *Buckner v. Carmack*, ____ La. ___, 272 So. 2d 326 (1972), *cert. filed*, 42 U.S.L.W. 3006 (1973) (Constitutional attack on due process grounds upon executory process.)

[43] La. Code Civ. Pro., Arts. 2291 *et seq.*

[44] La. Code Civ. Pro., Arts. 2411 *et seq. See* note 33 *supra.*

The Louisiana Supreme Court also quoted certain language from the opinion in *Fuentes v. Shevin* as a basis for finding sequestration to be constitutional: "There may be cases in which a creditor could make a showing of immediate danger that a debtor will destroy or conceal disputed goods."[45] This sentence was clearly dictum in *Fuentes* inasmuch as no such case was before the Court. However, even assuming that the quoted language embodies an exception to the requirements of prior notice and hearing, sequestration does not fall within that quoted exception. The statute, in its present form simply does not require the creditor to "make a showing of immediate danger that a debtor will destroy or conceal disputed goods." Such a showing was once a prerequisite to the granting of sequestration, but the legislature explicitly deleted this requirement by statute in 1912[46] and by recodification in 1960.[47] The present statute does require a showing that the defendant has the "power" to conceal, dispose of, waste or remove the disputed goods during the pendency of the action.[48] But the requirement of "power" is the equivalent of possession as "power" is inherent in the fact that the possessor of movable goods

[45] *W.T. Grant Co. v. Mitchell, supra* at 640, 269 So.2d at 190 (A. 29) quoting sentence from *Fuentes v. Shevin*, 407 U.S. 67, 93 (1972). The paragraph, from which that sentence was taken, reads: "Nor do the broadly drawn Florida and Pennsylvania statutes limit the summary seizure of goods to special situations demanding prompt action. There may be cases in which a creditor could make a showing of immediate danger that a debtor will destroy or conceal disputed goods. But the statutes before us are not narrowly drawn to meet any such unusual condition. *Sniadach v. Family Finance Corp., supra* at 339. And no such unusual situation is presented by the facts of these cases."

[46] *See* text accompanying note 63 *infra.*

[47] *See* note 6 *supra.*

[48] La. Code Civ. Pro., Art. 3571.

can always dispose of or conceal those goods, if he has that inclination.[49] Being the equivalent of possession, the statutory requirement of "power" to conceal, dispose of, etc., is really no limitation upon the availability of sequestration; every Louisiana buyer has this "power" as long as he is using the property which he purchased.

The Louisiana Supreme Court also discussed the distinctions between the vendor's privilege and the common law conditional sale as a factor to be considered in determining the constitutionality of sequestration. The thrust of the discussion was that the vendor's privilege is such a precarious security device that it requires the protection of sequestration at the expense of due process and that the common law conditional seller, on the other hand, has so much stronger a legal position that he has no real need for the replevin statutes found to be unconstitutional in *Fuentes v. Shevin.*[50] The error of the Louisiana decision is that it ignores the decision of this Court in *Fuentes v. Shevin* and the long line of cases on which *Fuentes v. Shevin* was based. The Louisiana Supreme Court found due process must be sacrificed to enforce a purely private security device without prior notice and hearing notwithstanding the availability of other remedies and the very basic interests of Mitchell in the property which was seized. The Louisiana court weighed sequestration against procedural due process and found that procedural due process must give way.

The Louisiana Supreme Court found that procedural due process must give way to sequestration not because sequestration is available only upon a clear showing of a special need for very prompt action, but because it perceived the *ex parte* aspect of sequestration to be

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[49] *See* note 18 *supra.*

[50] *W.T. Grant Co. v. Mitchell, supra* at 641-42, 269 So.2d at 191 (A. 29-30).

necessary to the vitality of the Louisiana vendor's privilege. The vendor's privilege was characterized as a right without a remedy which depended upon sequestration for its enforcement. That characterization of the vendor's privilege ignores several important considerations. The vendor's privilege, above all else, provides the Louisiana seller with a right of preference to the collateral, and that preference is good against any other creditor of the buyer except the lessor of the premises in which the collateral is kept.[51] The vendor's privilege is related to the provision in the Louisiana Civil Code prohibiting the retention by a seller of title to goods sold on credit,[52] but the Louisiana court failed to even consider the buyer's full legal title to the goods seized. In addition, the Louisiana court failed to note at that point in its opinion that other security devices[53] and other remedies[54] are available to the credit seller.

The cure of any deficiencies in the vendor's privilege as a security device should not be made at the expense of due process. The deficiencies in the vendor's privilege could be cured simply by legislation along the lines of Uniform Commercial Code Article 9 providing for ease in the recording of security devices and allowing the secured party to pursue the collateral in the hands of third parties. Indeed, this deficiency has been cured to some extent by the Louisiana Chattel Mortgage Act.[55] Furthermore, the Court's concern for the vendor's security

[51] La. Civ. Code, Art. 3263. *But cf.* Dainow, "Vicious Circles in the Louisiana Law of Privileges," 23 La. L. Rev. 1 (1964).

[52] *See* note 3 *supra.*

[53] *See* note 8 *supra.*

[54] *See* notes 40-44 *supra.*

[55] *See also* note 8 *supra.*

device was misdirected. Giving prior notice and hearing would not cause the destruction or forfeiture of the vendor's security device. Due process only requires that the enforcement of the security device be postponed until the validity of the underlying claim is subjected to adversarial scrutiny. Perhaps in truly extraordinary circumstances, due process would allow enforcement of a private security device to occur prior to notice and hearing. However, the sequestration statutes are tailored to apply to the ordinary case not to the extraordinary situation.

Moreover, the sequestration statutes do not require a "showing" in the constitutional sense, much less "a showing of immediate danger that a debtor will destroy or conceal disputed goods." *Fuentes v. Shevin, supra* at 93. The issuance of a writ of sequestration does not require the specific, detailed showing of probable cause necessary to obtain a search warrant[56] nor does it require the specific, detailed showing of the likelihood of immediate and irreparable injury necessary to obtain a temporary restraining order.[57] Sequestration issues upon the *pro forma* showing of the plaintiff that he is about to file an action,[58] he has an interest in property in the possession of the defendant, and he has posted a surety bond.[59] The issuance of the writ is ministerial[60] and no test of the validity of the seizure occurs until after the seizure. As this Court stated in *Fuentes v. Shevin, supra* at 93:

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[56] *Fuentes v. Shevin, supra* at 93 n. 30.

[57] La. Code Civ. Pro., Art. 3603. *See also* Fed. R. Civ. Pro. 65 (b).

[58] *See Kosches v. Nichols*, 68 Misc.2d 795, 327 N.Y.S.2d 968, 970 (Civ. Ct., N.Y. Cty., 1971) (". . . most affidavits are pro forma based on hearsay and speculation, and even the creditor may not know of a valid defense the debtor has to the action.")

[59] *See* notes 10, 12 *supra*.

[60] *See* notes 11, 12 *supra*.

> . . . The statutes, moreover, abdicate effective state control over state power. Private parties, serving their own private advantage, may unilaterally invoke state power to replevy goods from another. No state official participates in the decision to seek a writ; no state official reviews the basis for the claim to repossession; and no state official evaluates the need for immediate seizure. There is not even a requirement that the plaintiff provide any information to the court on these matters. The State acts largely in the dark. (footnote omitted).

C. W.T. Grant Company Did Not Proceed in a Manner Which Would Cure the Facial Unconstitutionality of the Louisiana Sequestration Procedure.

The Louisiana Supreme Court quoted certain language from the pleadings of Grant, without ever making clear the legal significance of those pleadings either under Louisiana law or under the United States Constitution. The language which was quoted was the averment that the plaintiff had a "fear" that Mitchell would "encumber, alienate, or otherwise dispose of the merchandise . . . during the pendency of these proceedings, and that a writ of sequestration is necessary . . ." *W.T. Grant Co. v. Mitchell, supra* at 630, 269 So.2d at 2187 (1972). (A. 22). Before discussing the ramification of that language under Louisiana law and in the context of the instant case, it is necessary to consider the constitutional principles involved.

This Court has been firm in its position that due process must be provided on the face of a statute or by a clear, authoritative construction of the statute requiring due process:

> Nor can extra-official or casual notice, or a hearing granted as a matter of favor or discretion, be

deemed a substantial substitute for the due process of the law that the Constitution requires. In *Stuart v. Palmer*, 74 N.Y. 183, 188, which involved the validity of a statute providing for assessing the expense of a local improvement upon the lands benefited, but without notice to the owner, the court said: "It is not enough that the owners may by chance have notice, or that they may as a matter of favor have a hearing. The law must require notice to them, and give them the right to a hearing and an opportunity to be heard." The soundness of this doctrine has repeatedly been recognized by this court. Thus in *Security Trust Co. v. Lexington*, 203 U.S. 323, 333 the court, by Mr. Justice Peckham, said, with respect to an assessment for back taxes: "If the statute did not provide for a notice in any form, it is not material that as a matter of grace or favor notice may have been given of the proposed assessment. It is not what notice, uncalled for by the statute, the taxpayer may have received in a particular case that is material, but the question is, whether any notice is provided for by the statute" (citing the New York case). So in *Central of Georgia Ry. v. Wright*, 207 U.S. 127, 138, the court said: "This notice must be provided as an essential part of the statutory provision and not awarded as a mere matter of favor or grace." . . . *Roller v. Holly*, 176 U.S. 398, 409 . . . . And in *Louis. & Nash. R.R. v. Stock Yards Co.*, 212 U.S. 132, 144, it was said: "The law itself must save the parties' rights, and not leave them to the discretion of the courts as such." *Coe v. Armour Fertilizer Works*, 237 U.S. 413, 424-425 (1915).

The constitutional question decided by *Coe* may have been raised by the Louisiana Supreme Court when it quoted in its opinion certain allegations made by Grant in its initial pleadings. In this case, the question would not

be whether Grant cured the failure of the statute to provide prior notice and hearing as no prior notice and hearing were given to Mitchell. The question is whether Grant's generalized conclusion of a "fear" that Mitchell would "encumber, alienate, or otherwise dispose of the merchandise" would constitute a constitutionally valid showing of a need for very prompt action.

The Louisiana Supreme Court prefaced its finding of constitutionality with a cross-reference to those allegations of "fear": "Aside from the quoted allegations of the petition and averments of attached affidavits . . ."[61] Rather than resting its decision upon the language quoted from the plaintiff's initial pleadings, the Louisiana Supreme Court found sequestration to be constitutional using its "implied-in-law knowledge" rationale. Thus, after leaving the door ajar, the Louisiana Supreme Court refused to walk through it. There are sound reasons which may have prompted the Court to refuse to rest its opinion on those initial pleadings. The most obvious is that those allegations were legally superfluous. Although the pre-1960 sequestration statutes technically required such allegations, the present sequestration statutes do not. Indeed, for a period of almost fifty years, 1912 to 1960, such allegations were routinely allowed with unabashed statutory recognition of the *pro forma* nature of the allegations:

> ACT NO. 190.
>
> To Define What Shall Be Deemed to Justify an Affidavit for the Issuance of a Writ of Sequestration under Paragraph 8 of Article 275 of the Code of Practice.
>
> Section 1. Be it enacted by the General Assembly of the State of Louisiana: That in cases of sequestra-

[61] *W.T. Grant Co. v. Mitchell, supra* at 640, 269 So.2d at 190.

> tion of movable property obtained upon the grounds specified in Paragraph 8 of, Article 275 of the Code of Practice, whether based upon a claim to a right of possession to, or upon a claim to a privilege upon movable property, *the fact that it lies within the power* of the defendant to conceal, part with, or dispose of the movable in his possession, during the pendency of the suit, *shall be deemed sufficient to justify an affidavit by the plaintiff,* for the purposes of obtaining the writ of sequestration, *that he fears that the defendant will* so conceal, part with, or dispose of the property in question.
>
> Section 2. Be it further enacted, etc., That all laws or parts of laws in conflict with the provisions of this act, be and the same are hereby repealed. La. Act No. 190 of 1912. (repealed 1960). (emphasis added).[62]

Act No. 190 of 1912 was more straightforwardly inserted into the sequestration statutes in 1960 by deleting the requirement of fear altogether. Comment (a) to La. Code Civ. Pro., Art. 3571.[63] Without a more definite showing, it may be inferred without difficulty that the quoted allegations of "fear" were merely hollow echoes from the old statute, long repealed.

Even if the quoted allegations were to be given some vitality, they would still constitute an insufficient showing to satisfy due process. Any showing other than that required by the sequestration statutes would be legally superfluous to the issuance of a writ of sequestration. It was the mandatory duty of the judge to issue the writ of sequestration upon pleadings and affidavits which met

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[62] *See also* note 24 *supra.*

[63] *See* note 24 *supra.*

the statutory requirements[64] and the constitutional requirement of showing the presence of an "extraordinary situation" would be irrelevant under the statutes. The initial pleadings are not subjected to close scrutiny—the issuance of a writ of sequestration is a ministerial act which a clerk may perform.[65] The official who issues the sequestration is not required to test the validity of the showing as this function is reserved for the post-seizure motion to dissolve.

The "showing" made by Grant in its initial pleadings was not the detailed, clear showing of facts required by the Constitution. The allegations are obviously *pro forma* legal jargon which show not facts but, if anything, inconsistent subjective conclusions of opinion.[66] No facts are recited to substantiate or support the subjective conclusions of fear that the defendant "will encumber, alienate or otherwise dispose of the merchandise." (A. 3, 4). The acts of encumbering, alienation and disposal are distinct, inconsistent acts, and the inconsistencies are not explained. The format of the petition and the credit manager's affidavit indicate both to be part of a form with spaces and underdelineations to be filled in. (R. 1, pp. 1, 2).[67] The language that was quoted by the Louisiana Supreme Court was obviously not the language to be filled into the spaces or the underdelineations. The allegations of "fear" were abandoned by Grant at the earliest possible point in these proceedings and were never reasserted as an actual basis for obtaining the seizure. At the evidentiary hearing on the motion to

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[64] *See* text accompanying note 11 *supra.*

[65] *See* note 12 *supra.*

[66] *See* note 58 *supra.*

[67] The spacing and underdelineations as they appeared in the petition were not printed in the Single Appendix.

dissolve, Grant rested its assertion of entitlement to seizure upon its vendor's privilege alone and was content to rely solely upon the joint stipulation of counsel: "It is stipulated that the vendor's lien did exist on the items." (A. 16). Significantly, this was the only showing of the plaintiff pursuant to the requirements of Louisiana Code of Civil Procedure, Article 3506, which provides that the ". . . defendant by contradictory motion may obtain the dissolution of a writ of attachment or of sequestration, unless the plaintiff proves the grounds upon which the writ was issued." The opinion of the trial court does not evidence any reliance upon the existence of an extraordinary situation as none was required by the law and none was presented to that court. (A. 17-19).

Grant's suit is ordinary and not extraordinary. It is a claim that one of its customers is delinquent in paying upon several instalment sales and that the delinquency entitles Grant to the accelerated balances of all the remaining instalments. What is constitutionally offensive is the fact that Mitchell was deprived of the goods sold to him prior to any adjudication of the validity of the plaintiff's claims. Because he had purchased the goods, was using the goods and had made payments upon those goods, Mitchell was entitled to notice and a hearing before the seizure of those goods. Although this case has not yet proceeded to the merits of Grant's claim, there are legal problems posed by the exhibits filed into the record (but not into evidence) by the plaintiff which defendant may desire to raise.[68] For example, the exhibits provide for late charges upon delinquent instal-

[68] (R. 3, p. 1, 2, 3). The exhibits were attached to plaintiff's petition as exhibits and have not been put into the record as evidence.

ments, and those charges might render the contracts usurious.[69] The disclosure of the finance charges or of the plaintiff's security interest might not have been sufficiently conspicuous or in a meaningful manner as required by the Truth In Lending Act.[70] The plaintiff may have lost its option to strictly enforce the various acceleration clauses of the contracts by acquiescence in accepting late instalments from the buyer.[71] These and other defenses or claims[72] may be available to the Louisiana defendant whose property may be subjected to seizure by sequestration. The defendant should be given a meaningful opportunity for a hearing upon his defense or claim. To be meaningful, that opportunity must come before he is deprived of the use and enjoyment of his property.

CONCLUSION

W.T. Grant Company seized Lawrence Mitchell's refrigerator, stove, clothes washer, and phonograph without prior notice and without a prior opportunity for a

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[69] *See generally Thrift Funds of Baton Rouge v. Jones*, ___ La. ___, 274 So.2d 150 (La. Sup. Ct. 1973) (Late charges in excess of 8% per annum render discount note usurious and lender must forfeit all interest.); *Gordon Finance Co. v. Chambliss*, 236 So.2d 533 (La. App.), *cert. denied*, 256 La. 869, 239 So.2d 364 (1970) (Note taken in connection with the sale of an automobile usurious for providing late charges in excess of 8% per annum).

[70] 15 U.S.C.A. §§1601 *et seq.* (1968 as amended).

[71] *See generally Jones v. Paul*, 254 So.2d 915 (La. App. 1971) (Bond for deed seller of a house could not require strict compliance with payment schedule after six years of acquiescence in late payments unless he gave the buyer notice that strict compliance would be required in the future). *But cf. Rex Credit Co., Inc. v. Kirsch*, 4 So.2d 797 (La. App. 1941) (No acquiescence where creditor protested against delinquent payment of instalments).

[72] *See* note 39 *supra*.

hearing. That seizure was accomplished by the Louisiana procedure of sequestration as embodied in a series of broadly written, construed, and applied statutes. The Louisiana sequestration statutes offend the requirements of due process that no person shall be deprived of property without being first given prior notice and a meaningful opportunity to defend his interests. Neither the sequestration statute nor the facts of this case come within any previously suggested exception of this Court to the requirements of procedural due process.

For the above reasons, Petitioner Lawrence Mitchell respectfully requests that the decision of the court below be vacated and reversed.

Respectfully submitted,

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Attorneys for Petitioner

APPENDIX A

STATUTES

PROVISIONS OF THE LOUISIANA CODE OF CIVIL PROCEDURE

Art. 282. Acts which may be done by district court clerk

The clerk of a district court may:

(1) Grant an appeal and fix the return day thereof; fix the amount of the bond for an appeal, or for the issuance of a writ of attachment or of sequestration, or for the release of property seized under any writ, unless fixed by law; appoint an attorney at law to represent a nonresident, absent, incompetent, or unrepresented defendant; or dismiss without prejudice, on application of plaintiff, an action or proceeding in which no exception, answer, or intervention has been filed; and

* * * * *

Art. 283. Orders and judgments which may be signed by district court clerk

* * * * *

(2) An order for the issuance of executory process, of a writ of attachment or of sequestration, or of garnishment process under a writ of fieri facias, attachment, or of sequestration; the release under bond of property seized under a writ of attachment or of sequestration; or to permit the filing of an intervention;

* * * * *

Art. 325. Right of entry for execution; may require assistance of others if resistance offered or threatened

In the execution of a writ, mandate, order, or judgment of a court, the sheriff may enter on the lands, and into the residence or other building, owned or occupied by the judgment debtor or defendant. If necessary to effect entry, he may break open any door or window. If resistance is offered or threatened, he may require the assistance of the police, of neighbors, and of persons present or passing by.

Art. 3501. Petition; affidavit; security

A writ of attachment or of sequestration shall issue only when the nature of the claim and the amount thereof, if any, and the grounds relied upon for the issuance of the writ clearly appear from specific facts shown by the petition verified by, or by the separate affidavit of, the petitioner, his counsel or agent.

The applicant shall furnish security as required by law for the payment of the damages the defendant may sustain when the writ is obtained wrongfully.

Art. 3502. Issuance of writ before petition filed

A writ of attachment or of sequestration may issue before the petition is filed, if the plaintiff obtains leave of court and furnishes the affidavit and security provided in Article 3501. In such a case the petition shall be filed on the first judicial day after the issuance of the writ of attachment or of sequestration, unless for good cause shown the court grants a longer delay.

Art. 3504. Return of sheriff; inventory

The sheriff, after executing a writ of attachment or sequestration, shall deliver to the clerk of the court from which the writ issued a written return stating the manner in which he executed the writ. He shall annex to the return an inventory of the property seized.

Art. 3505. Reduction of excessive seizure

If the value of the property seized under a writ of attachment or of sequestration exceeds what is reasonably necessary to satisfy the plaintiff's claim, the defendant by contradictory motion may obtain the release of the excess.

Art. 3506. Dissolution of writ; damages

The defendant by contradictory motion may obtain the dissolution of a writ of attachment or of sequestration, unless the plaintiff proves the grounds upon which the writ was issued. If the writ of attachment or of sequestration is dissolved, the action shall then proceed as if no writ had been issued.

The court may allow damages for the wrongful issuance of a writ of attachment or of sequestration on a motion to dissolve, or on a reconventional demand. Attorney's fees for the services rendered in connection with the dissolution of the writ may be included as an element of damages whether the writ is dissolved on motion or after trial on the merits.

Art. 3507. Release of property by defendant; security

A defendant may obtain the release of the property seized under a writ of attachment or of sequestration by furnishing security for the satisfaction of any judgment which may be rendered against him.

Art. 3508. Amount of security for release of attached or sequestered property

The security for the release of property seized under a writ of attachment or of sequestration shall exceed by one-fourth the value of the property as determined by the court, or shall exceed by one-fourth the amount of the claim, whichever is the lesser.

Art. 3510. Necessity for judgment and execution

Except as provided in Article 3513, a final judgment must be obtained in an action where a writ of attachment or of sequestration has issued before the property seized can be sold to satisfy the claim.

Art. 3512. Release of plaintiff's security

The security required of the plaintiff for the issuance of a writ of attachment or of sequestration shall be released when judgment is rendered in his favor and is affirmed on appeal or when no appeal has been taken and the delay for appeal has elapsed.

Art. 3541. Grounds for attachment

A writ of attachment may be obtained when the defendant:

(1) Has concealed himself to avoid service of citation;

(2) Has mortgaged, assigned, or disposed of his property or some part thereof, or is about to do any of these acts, with intent to defraud his creditors or give an unfair preference to one or more of them;

(3) Has converted or is about to convert his property into money or evidences of debt, with intent to place it beyond the reach of his creditors;

(4) Has left the state permanently, or is about to do so before a judgment can be obtained and executed against him; or

(5) Is a nonresident who has no duly appointed agent for service of process within the state.

Art. 3571. Grounds for sequestration

When one claims the ownership or right to possession of property, or a mortgage, lien, or privilege thereon, he may have the property seized under a writ of

sequestration, if it is within the power of the defendant to conceal, dispose of, or waste the property or the revenues therefrom, or remove the property from the parish, during the pendency of the action.

Art. 3574. Plaintiff's security

An applicant for a writ of sequestration shall furnish security for an amount determined by the court to be sufficient to protect the defendant against any damage resulting from a wrongful issuance, unless security is dispensed with by law.

Art. 3576. Release of property under sequestration

If the defendant does not effect the release of property seized under a writ of sequestration, as permitted by Article 3507, within ten days of the seizure, the plaintiff may effect the release thereof by furnishing the security required by Article 3508.

Art. 5123. Testing sufficiency and validity of bond

Any person in interest wishing to test the sufficiency, solvency of the surety, or validity of a bond furnished as security in a judicial proceeding shall rule the party furnishing the bond into the trial court in which the proceeding was brought to show cause why the bond should not be decreed insufficient or invalid, and why the order, judgment, writ, mandate, or process conditioned on the furnishing of security should not be set aside or dissolved. If the bond is sought to be held invalid on the ground of the insolvency of a surety other than a surety company licensed to do business in this state, the party furnishing the bond shall prove the solvency of the surety on the trial of the rule.

Art. 5124. Furnishing new or supplemental bond to correct defects of original

Within four days, exclusive of legal holidays, of the rendition of judgment holding the original bond insufficient or invalid, or at any time if no rule to test the original bond has been filed, the party furnishing it may correct any defects therein by furnishing a new or supplemental bond, with either the same surety if solvent, or a new or additional surety.

The new or supplemental bond is retroactive to the date the original bond was furnished, and maintains in effect the order, judgment, writ, mandate, or process conditioned on the furnishing of security.

The furnishing of a supplemental bond, or the furnishing of a new bond by a different surety, does not discharge or release the surety on the original bond; and the sureties on both are liable in solido to the extent of their respective obligations thereon and may be joined in an action on the bond.

Art. 5127. Release bond

No property seized under any order, judgment, writ, mandate, or process of a court may be released from seizure under a release or forthcoming bond unless it is executed by:

(1) A surety company licensed to do business in this state; or

(2) An individual surety, and has been approved by the sheriff after the latter has satisfied himself of the solvency of the surety.

Articles 5121 through 5126 apply to a release or forthcoming bond.

PROVISIONS OF THE LOUISIANA CIVIL CODE

Art. 3227. He who has sold to another any movable property, which is not paid for, has a preference on the price of his property, over the other creditors of the purchaser, whether the sale was made on a credit or without, if the property still remains in the possession of the purchaser.

So that although the vendor may have taken a note, bond or other acknowledgment from the buyer, he still enjoys the privilege.

Any person who may sell the agricultural products of the United States in the city of New Orlenas [Orleans], shall be entitled to a special lien and privilege thereon to secure the payment of the purchase money, for and during the space of five days only, after the day of delivery; within which time the vendor shall be entitled to seize the same in whatsoever hands or place they may be found, and his claim for the purchase money shall have preference over all others. If the vendor gives a written order for the delivery of any such products and shall say therein that they are to be delivered without vendor's privilege, then no lien shall attach thereto.

Art. 3228. But if he allows the things to be sold, confusedly with a mass of other things belonging to the purchaser, without making his claim, he shall lose the privilege, because it will not be possible in such a case to ascertain what price they brought.

LOUISIANA ACT NO. 190 OF 1912

ACT NO. 190.

To Define What Shall Be Deemed to Justify an Affidavit for the Issuance of a Writ of Sequestration under Paragraph 8 of Article 275 of the Code of Practice.

Section 1. Be it enacted by the General Assembly of the State of Louisiana: That in cases of sequestration of movable property obtained upon the grounds specified in Paragraph 8 of, Article 275 of the Code of Practice, whether based upon a claim to a right of possession to, or upon a claim to a privilege upon movable property, the fact that it lies within the power of the defendant to conceal, part with, or dispose of the movable in his possession, during the pendency of the suit, shall be deemed sufficient to justify an affidavit by the plaintiff, for the purposes of obtaining the writ of sequestration, that he fears that the defendant will so conceal, part with, or dispose of the property in question.

Section 2. Be it further enacted, etc., That all laws or parts of laws in conflict with the provisions of this act be, and the same are hereby repealed. (repealed 1960)

APPENDIX B

RETURN OF CONSTABLE OF FIRST CITY COURT
FOR THE CITY OF NEW ORLEANS

2b

No. [redacted] 70C148-248

M. T. GRANT COMPANY

Versus

LAWRENCE MITCHELL

Notice of Seizure

STATE OF LOUISIANA

CONSTABLE'S OFFICE

of the

FIRST CITY COURT

For The City of New Orleans

ROOM 208

CIVIL COURTS BUILDING, 421 Loyola Avenue

In the Civic Center

NEW ORLEANS, Feb. 1, 19 72

To Lawrence Mitchell, 7611 Chef Monteur Highway, Apt. A-10, New Orleans, La.

PLEASE TAKE NOTICE — That by virtue of writ of Sequestration

issued in the above mentioned suit, I have seized and taken into my possession the following described property, to-wit:

(1) Bedford Refrigerator
(1) Bedford Range
(1) Bedford Heater
(1) Bedford Washer

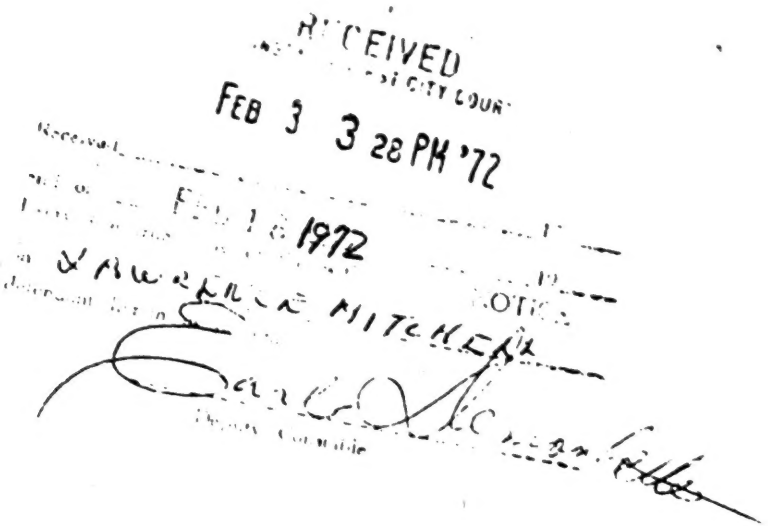
To pay and satisfy the writ issued in case, say the sum of ($574.47 Five Hundred Seventy-Four Dollars and Seventeen cents with interest and cost.

Form 120

Warning — For your own protection this seizure can only be released by the constable.

CLYDE F. BILL, SR., Constable.

By _____ Deputy


RECEIVED
FEB 3 3 28 PM '72

APPENDIX C

INVENTORY OF CONSTABLE OF FIRST CITY COURT FOR THE CITY OF NEW ORLEANS

CONSTABLE FIRST CITY COURT

NEW ORLEANS

NO 14844 Dec 18 19 72

W. T. Grant Co.

VERSUS

Laurence Mitchell

SEIZED FROM: NAME Laurence Mitchell ADDRESS 7611 Hall

SEIZED BY E. C. Nemerito DATE SEIZED 12-19-72

STORED AT: Frank's (DEPOT) THIS CAR HAULED BY Frank's

MERCHANDISE SEIZED: (ITEMIZE)

1 Packard Refrigerator
1 " Range
1 " Stove
1 " Washer

Custody of Constable Donegan

POINTED OUT BY: [illegible]

RECEIVED BY: J. Donegan

NAME OF DRIVER: _____

FOR: _____

13a